IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2007

Coram

The Honourable Mr. Justice K.N.BASHA

Crl. R.C.No.685 of 2004
and
M.P.NO.4387 of 2006

1.Indira
2.Minor Pratheep Raja
Minor represented by his
mother/Guardian Indira .. Petitioners (Petitioners)

vs.

N.Kannan .. Respondent (Respondent)

Revision under Section 397 and 401 of Criminal Procedure Code against the order dated 4.2.2004 made in M.C.No.22 of 2002 on the file of Family Court, Salem.

for Petitioners : Mr.N.Manokaran

for Respondent : Mr.N.Doraisamy
(Legal Aid counsel)

O R D E R

The petitioners have come forward with this petition challenging the order of the dismissal of the maintenance petition filed by the petitioners in M.C.No.22 of 2002 by the learned Judge, Family Court, Salem by order dated 4.2.2004.

2. Learned counsel for the petitioners has submitted that the learned Judge, Family Court, Salem dismissed the petition mainly on the ground that the petitioners were admittedly residing only at Vennanthur, Namakkal District and the respondent is residing at Coimbatore and the petitioners lastly resided admittedly at Coimbatore with the respondent and therefore the petition is liable to be dismissed on the ground that Salem Court is not having territorial jurisdiction to entertain this petition for maintenance filed by the petitioners.

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3. Learned counsel for the petitioners further contended that the finding of the Family Court, Salem is contrary to the material facts available on record. Even in the petition filed by the petitioners it is very clearly stated that the petitioners lastly resided at Salem with the respondent. It is also further contended by the learned counsel for the petitioners that even in the counter, this fact was admitted by the respondent. Therefore, the dismissal of the maintenance petition filed by the petitioners by the learned Judge, Family Court, Salem for want of territorial jurisdiction is unsustainable in law.

4. In support of his contention, learned counsel for the petitioners placed reliance on the following decisions:

1.M.Jagir Kaur Vs.Jaswant Singh reported in AIR 1963 Supreme Court 1521 (V 50 C 223)

2.Ram Saran Parshotam Dass Vs. Smt.Soman Wati (1964(i) Crl.L.J.483 (Vol.68 C.N.146)

3.Shantabai Vs.Vishnupant reported in AIR 1965 Bombay 107 (V52 C 22)

4.K.Mohan Vs. Balakanaka Lakshmi reported in 1983 MLJ (Crl.) 497

5. Mr.N.Doraisamy, learned counsel for the respondent/ husband contended that there is no illegality or infirmity in the order passed by the learned Judge, Family Court, Salem and it is submitted by the learned counsel for the respondent that the learned Judge has given a specific reason to the effect that the petitioners are admittedly residing at Vennanthur of Namakkal District and now the respondent is residing at Coimbatore. Therefore it is submitted that the learned Family Judge Salem has rightly dismissed the maintenance case petition filed by the petitioners herein.

6. I have carefully considered the rival contentions put forwarded by either side and the materials available on record.

7. A perusal of the record clearly shows that petitioners categorically stated that they were residing lastly resided at Salem with the respondent and in the counter filed by the respondent/husband also the said fact was admitted. It is pertinent to point out that even in the impugned order passed by the learned Judge, Family Court, Salem it is specifically mentioned that the petitioners and respondent admittedly lastly resided at Salem before the respondent husband got transfer to Coimbatore. Therefore, it is crystal clear from the materials available on record that both the respondent and petitioners

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admittedly resided together at Salem and as such the learned Judge, Family Court,Salem is having jurisdiction to entertain the maintenance petition filed by the petitioner herein.

8. Learned counsel for the petitioner also rightly placed reliance on AIR 1963 Supreme Court 1521 (V 50 C 223)(M.Jagir Kaur Vs.Jaswant Singh) wherein it is stated as follows:

> "9. The cognizant expression"last resided" takes colour from the word "resides" used earlier in the sub-section. The same meaning should be given to the word "resides" and the word "resided", that is to say, if the word "resides" includes temporary residence, the expression 'last resided" means the place where the person had his last temporary residence. But it is said that even on the assumption, the expression can only denote the last residence of the person with his wife in any part of the world and that it is not confined to his last residence in any part of India. If the words "where he last resided with his wife" are construed in vacuum the construction suggested by the learned counsel for the respondent may be correct; but by giving such a wide meaning to the said expression we would be giving extra territorial operation to the Code of Criminal procedure. Section2(1) of the Code extends the operation of the Code to the whole of India except the States of Jammu and Kashmir; that is to say, the provisions of the Code, including S.488(8) thereof, have operation only throughout the territory of India, except the States of Jammu and Kashmir. if so, when sub-sec.(8) of S.488 of the Code, prescribing the limits of jurisdiction, speaks of the last residence of a person with his wife, it can only mean his last residence with his wife in the territories of India. It cannot obviously mean his residing with her in a foreign country, for an Act cannot confer jurisdiction on a foreign court. It would, therefore, be a legitimate construction of the said expression if we held that the district where he last resided with his wife must be a district in India."

9. The above settled principle of law laid down by the Hon'ble Supreme Court was also relied on by this Court in K.Mohan

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Vs. Balakanaka Lakshmi reported in 1983 MLJ 497 by Hon'ble Justice Ratnavel Pandian (as he then was).

10. The Punjab High Court in Ram Saran Parshotam Dass v. Smt.Soman Wati reported in 1964 (1) Cri.L.J. 483 held as follows :

> "Thus where in an application for maintenance by a wife under S.488, the husband raised objection to the territorial jurisdiction of the Court but the Magistrate relying on the evidence before him, overruled it and the husband also availed of the opportunity of producing his witnesses and of filing documents as his evidence before the Magistrate,
>
> Held that the Magistrate had jurisdiction to pass the order and even if the jurisdiction was in the Court of the Magistrate in another district, the irregularity was cured in view of the provisions of Section 531, as no prejudice had been caused to the husband by the trial at the wrong place."

11. In yet another decision rendered by the Bombay High Court in Shantabai V. Vishnupant reported in AIR 1965 Bombay 107, it was held as follows :

> "The object of S.488 appears to be clear enough : Where a husband and wife have fallen out and the wife is required to make an application either for herself or for her child, she should not be put to the harassment of going to the very place where the husband is at the time of the application residing. If that were so, the recalcitrant husband who has fallen out with the wife could move about from place to place and thus make it impossible for the wife to choose a place in which to prefer her application for maintenance. At the same time it is clear that a fractious woman should not be enabled to harass her husband by making an application at any place very far from the place where the husband resides after their separation, and having regard to these rival claims of the two spouses the legislature limited the jurisdiction under Section 488 to the district where the husband resides, that is to say, the jurisdiction was given to any magistrate in the district so long as the husband was resident in the district over which the magistrate held jurisdiction."

12. Therefore, this Court is constrained to allow the revision filed by the petitioners and the impugned order passed by the learned Family Judge, Salem in MC.No.22 of 2002 dated 4.2.2004

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is hereby set aside. The matter is remitted back to the learned Family Court Judge, Salem for fresh disposal in accordance with law. Learned Judge, Family Court,Salem is also directed to complete the proceedings as expeditiously as possible .

13. With the above observation, the Criminal Revision Case is disposed of. Mr.N.Doraisamy, learned counsel who argued on behalf of the respondent as legal aid counsel is entitled for remuneration from the High Court Legal Aid Services.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

VJY/gg

To

1. The Presiding Officer,
Family Court, Salem.

2. The Secretary
High Court Legal Aid Services,
Chennai.

1 cc to Mr.N.Manokaran, Advocate, sr. 12341
1 cc to Mr.N.Doraisamy, Advocate, sr. 12340

CRL.R.CNO.685 of 2004

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